IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Bail Appl..No. 6743 of 2007()

(CRIME NO.307/07 OF KODUVALLY POLICE STATION)

PETITIONER/ACCUSED:

ABDURAHIMAN KUTTY HAJI,
CHOVVARUKANDIYIL HOUSE,
PACHILOT, VAVAD AMSOM DESOM,
KODUVALLY.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:

1. **THE SUB INSPECTOR OF POLICE,**
   KODUVALLY POLICE STATION.

2. **STATE REP BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J.

B.A.No.6743 of 2007

Dated this the 15th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner, allegedly a person, aged about 70 years, faces allegations under Section 376 read with 511 I.P.C. The crux of the allegations is that he forcibly took the victim in this case, a girl child aged about nine years, a student of the third standard to a bathroom when she was returning from her school. There, he allegedly threatened her, indecently assaulted her and attempted to commit rape on her. The young child, along with the petitioner, was found by another neighbour coming out of the bathroom. She enquired with the child. The child did not make any response. She looked worried. The child went home. She did not tell her mother also of what had happened. Her father had deserted her mother and her mother, along with two children, is staying in the house. Later, the child showed reluctance to go to school. She was closely questioned and then she gave her mother the version that she was indecently assaulted and rape was attempted to be committed on her. It is, thereafter, the F.I statement was filed by the mother of the child. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the

petitioner is absolutely innocent. Totally false and vexatious allegations are being raised against the petitioner. The mother of the child has now realised her fault and she has given Annexure 1 statement. In these circumstances, the petitioner does not deserve to suffer the trauma of arrest and detention. He may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials collected so far do certainly indicate the complicity of the petitioner. There is absolutely no reason to doubt or suspect the version of the complainant, that is the mother of the victim child. The child has also been questioned and her statement has been recorded. The neighbouring woman, who saw the child and the petitioner under suspicious circumstances has also been questioned and statement recorded. The victim child is aged about nine years only. In any view of the matter, the petitioner does not deserve to be granted anticipatory bail, submits the learned Public Prosecutor. The learned Public Prosecutor further submits that the investigating officer has no information about any settlement of the dispute. The learned Public Prosecutor submits that moreover, this is not a dispute which even the mother of the victim/child can settle or compound.

4. I have considered all the relevant inputs. The case diary

has been placed before me for my perusal. I have gone through the statement of the mother of the child, the child and the neighbouring woman, who had allegedly seen the petitioner and the child under suspicious circumstances. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007